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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS-FV-13-0010; FV13-946-1 IR]

Irish Potatoes Grown in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the State of Washington Potato Committee (Committee) for the 2013-2014 and subsequent fiscal periods from \$0.003 to \$0.0025 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in Washington. Assessments upon Washington potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE

FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-

mail: Teresa.Hutchinson@ams.usda.gov or
GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable

potatoes beginning July 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2013-2014 and subsequent fiscal periods from \$0.003 to \$0.0025 per hundredweight of potatoes handled.

The Washington potato marketing order provides authority for the Committee, with the approval of USDA, to

formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011-2012 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 30, 2013, and unanimously recommended 2013-2014 expenditures of \$37,400 and an assessment rate of \$0.0025 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$37,300. The assessment rate of \$0.0025 is \$0.0005 lower than the rate currently in effect. This action will allow

the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The major expenditures recommended by the Committee for the 2013-2014 fiscal period include \$20,000 for surveillance inspection (compliance activity), \$4,800 for a management agreement with the Washington State Potato Commission, \$2,500 for committee expenses, and \$2,500 for bonds and insurance. These budgeted expenses are the same as those approved for the 2012-2013 fiscal period.

The assessment rate recommended by the Committee was derived by multiplying anticipated shipments of Washington potatoes by various assessment rates. Applying the \$0.0025 per hundredweight assessment rate to the Committee's 10,000,000 hundredweight crop estimate should provide \$25,000 in assessment income. Thus, income derived from handler assessments and \$100 projected interest plus, \$12,300 from the Committee's monetary reserve would be adequate to cover the recommended \$37,400 budget for 2013-2014. Funds in the reserve were \$72,769 as of June 30, 2012. The Committee estimates a reserve of \$65,969 on June 30, 2013, which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (\$ 946.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013-2014 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

During the 2011-2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or

approximately 98 percent of the handlers, had annual receipts of less than \$7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2011 was \$7.90 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately \$326,021. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2013-2014 and subsequent fiscal periods from \$0.003 to \$0.0025 per hundredweight of potatoes. The Committee also unanimously recommended 2013-2014 expenditures of \$37,400. The assessment rate of \$0.0025 is \$0.0005 lower than the previous rate. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The quantity of assessable potatoes for the 2013-2014 fiscal period is estimated at 10,000,000 hundredweight. Thus, the \$0.0025 rate should provide \$25,000 in assessment income. Income derived from handler assessments, along

with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2013-2014 year include \$20,000 for surveillance inspection (compliance activity), \$4,800 for a management agreement with the Washington State Potato Commission, \$2,500 for committee expense, and \$2,500 for bonds and insurance. These budgeted expenses are the same as those approved for the 2012-2013 fiscal period.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were considered, but not recommended because they would reduce the financial reserve more than desired.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2013-2014 fiscal period could average \$7.65 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 2013-2014 fiscal period as a percentage of total producer revenue is 0.0327 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington potato industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 30, 2013, meeting was a public meeting. All entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information,

it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013-2014 fiscal period begins on July 1, 2013, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable potatoes beginning with the 2013-2014 fiscal period; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946 - IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 946.248 is revised to read as follows:

§ 946.248 Assessment rate.

On and after July 1, 2013, an assessment rate of \$0.0025 per hundredweight is established for Washington potatoes.

Dated: April 23, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

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